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The Connecticut Supreme Court Aces Another ABC Test

Working Together

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This is the latest in a series of blog posts on the so-called "ABC Test," which is used in Connecticut to determine whether a worker is an employee or an independent contractor for purposes of eligibility for unemployment compensation benefits. Last year the Connecticut Supreme Court issued a decision with an employer-friendly interpretation of the first two prongs of the test, *The Connecticut Supreme Court Gets An "A,"* March 11, 2016, and my partner Jon Orleans discussed a pending case that would interpret Part C, *The ABC's of Worker Classification Are Once Again Before the Supreme Court*, August 16, 2016. The Court has now issued a decision that is again favorable to employers.

Since the unemployment compensation system is a safety net for people who have lost their jobs, claimants are considered to be employees of the employer against whom the claim is made, rather than independent contractors, unless they meet all three parts of the test for independent contractor status: being free from the potential employer's control and direction, performing a service which is outside the usual course of business or outside of the usual places of business of the potential employer, and being customarily engaged in an independently established trade or occupation of the same nature as the business of the potential employer. [As a side note, the term "ABC Test" derives from an earlier version of the statute in which the three factors were described in subsections A, B and C. The current citation is Connecticut General Statute 31-222(a)(1)(B)(ii)(I), (II) and (III).]

Jon's blog alerted us to a then-pending case, Southwest Appraisal Group, LLC v. Administrator, involving unemployment compensation claims by auto damage appraisers who were treated by Southwest as independent contractors. The issue was whether Part C of the test, being customarily engaged in an independent trade or business, required the claimants to actually have other appraisal customers or clients at the same time that they were performing appraisals for Southwest. The Employment Security Board of Review, which had been upheld in several trial court decisions, was of the opinion that the claimants had to have performed services for third parties, and not just have the potential to do so, in order to be deemed independent contractors. In a decision dated March 31, 2017, the Supreme Court reversed this position and held that other factors could be considered in the absence of actual customers. [The decision is reported at 324 Conn. 822.]

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The Supreme Court applied a "totality of circumstances" analysis, in which many other factors could support the existence of an independent trade or business, even in the absence of actual customers. Among the many factors to be considered were possessing a state license or special skills, advertising an independent business, having a separate place of business, having vehicles or equipment for the independent business, carrying insurance, having a clientele, working for other entities, and having a personal business reputation. No single factor – including whether services were provided to customers other than the putative employer – is dispositive by itself.

This is not to suggest that it is now easier to classify a worker as an independent contractor. Employers must also keep in mind that independent contractor status is subject to varying tests for different purposes, such as tax withholding, unemployment compensation, or wage-hour laws. The time to classify workers properly is at the beginning of the work relationship, not at the end of a lengthy litigation process, even with ultimate success before the Supreme Court. However, employers now have the benefit of common sense interpretations of all three parts of the ABC Test.

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